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DIGEST

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Appel

SB No. 437

Present law (R.S. 9:2772) grants a 5-year preemptive period for actions against contractors in general involving deficiencies in surveying, design, supervision, or construction of immovables or improvements thereon, but exempts from such preemptive period any action against any such contractor whose fraud has caused the breach of contract or damages sued upon.

Proposed law retains present law and adds that if fraud is alleged in actions commenced after the five-year period and the court determines that the allegation was brought in bad faith and no fraud is found, then the party who made the allegation shall be liable for court costs and attorney fees. If fraud is proven to have occurred, then the party committing the fraud shall be liable for court costs and attorney fees.

(Amends R.S. 9:2772(H)(2))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Added that if fraud is proven to have occurred, then the party committing the fraud shall be liable for court costs and attorney fees.
2. Added that allegation of fraud is for sole purpose of tolling the prescriptive period and no fraud is found.

Summary of Amendments Adopted by HouseCommittee Amendments Proposed by House Committee on Civil Law and Procedure to the engrossed bill.

1. Deleted provision limiting application to non-residential contracts.
2. Added provision specifying application to actions commenced after the expiration of the five-year period.
3. Deleted reference to the tolling of the prescriptive period.